



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

about the engine. The engine had been in operation some two weeks or more, and after the accident was operated with the same valve for several months without dangerous results. *Held*, by Day, C. J., that the court below properly directed a verdict for the defendant, on the ground "that the proof was insufficient to show that the engine equipped with such a valve, was *imminently dangerous*, so as to render defendant liable for intestate's death." *Marquardt v. Ball Engine Co.* (1903), 122 Fed. Rep. 374.

The court relies upon *Savings Bank v. Ward*, 100 U. S. 195, 25 L. ed. 621; *Losee v. Clute*, 51 N. Y. 494, 10 Am. R. 638; *Bragdon v. Perkins Campbell Co.*, 87 Fed. R. 109, 30 C. C. A. 567, and distinguishes *Thomas v. Winchester supra*, and considers the statement of the rule by the Master of the Rolls in *Heaven v. Pender*, 11 Q. B. Div. 503, to be incorrect.

Neither of the courts in the foregoing cases enters into a discussion of principles and authorities with anything like the fulness of the decision of *Huset v. Case Threshing Machine Co.*, (C. C. A.) 120 Fed. 865, 2 MICHIGAN LAW REVIEW, 151, though they apply the rules there set forth.

A valuable discussion of the principles involved in such cases is to be found in Mr. C. B. Labbatt's article "*Negligence in Relation to Priority of Contract*," in 16 *Law Quarterly Review*, p. 168.

TORTS—DEATH BY WRONGFUL ACT—RIGHT OF A POSTHUMOUS CHILD TO SUE.—A statute of California provides that an action for death by wrongful act may be brought by either the heirs or the personal representatives of the deceased. A widow, suing as heir, recovered judgment for the wrongful killing of her husband. *Held*, judgment was a bar to a subsequent action for the same wrong, brought by a child who was afterward born to her, but who, at the time of the judgment, was *en ventre sa mere*. *Daubert v. Western Meat Co.* (1903), — Cal. —, 73 Pac. Rep. 244.

The majority of the court, in rendering this decision, seem to have been influenced more by the apparent hardship to the defendant in having to respond to two judgments for the same wrong, than by the logic of the case. A California statute provides that a child *en ventre sa mere* shall be considered as *in esse* whenever such a supposition would be for its benefit. Beatty, C. J., in a dissenting opinion, points out that, logically, the decision of the majority would deny an action to a child in being where, without fraud or laches, he should fail to join with his mother in a former suit. He further maintains that the fraud of the mother in concealing the fact that there was another heir legally in existence, should not be imputed to the child, but that, if any damage was occasioned thereby, she should respond to the defendant therefor. A case very similar in its facts came before the Supreme Court of Texas, and it was held, in the absence of a statute declaring a child *en ventre sa mere*, to be legally in existence, that a recovery by the mother would not bar an action by the child. *Nelson v. Galveston H. & S. A. Ry. Co.*, 78 Tex. 621, 14 S. W. Rep. 1021, 11 L. R. A. 391, 22 Am. St. Rep. 81. The late case of *Galveston, H. & S. A. Ry. Co. v. Contreras* (1903), — Tex. Civ. App. —, 72 S. W. Rep. 1051, is to the same effect.

TORTS—WIFE'S RIGHT OF ACTION FOR ALIENATION OF HUSBAND'S AFFECTIONS.—Plaintiff alleges that through the enticement and influence of defendant the love and affection of her husband for her have been destroyed; that he has deserted her; and that she has suffered greatly from the loss of his society and support. On demurrer to the declaration, *Held*, such an action could not be maintained. *Hodge v. Wetzler* (1903), — N. J. L. —, 55 Atl. Rep. 49.

The court bases its decision on three grounds: (1) At common law the wife has no right of action against a third person for alienating her husband's affections. (2) She cannot sue under a statute permitting a married woman to sue in her own name for injuries to her separate property because the reciprocal rights of husband and wife to the society of one another are not "property" within the meaning of the statute. (3) The loss of the husband's love and affection is not such an injury to her person as will enable the wife to sue under a statute permitting her, when living separate and apart from her husband, to sue in her own name for injuries to her person or reputation. An action by the wife for the alienation of her husband's affection could not be brought at common law for the reason that the husband was a necessary party and the damages, if any were recovered, would belong to him, but the courts of this country have quite generally held, since the passage of statutes giving to married women the right to sue in their own names, that such an action as that in the principal case might be maintained. *Mehrhoff v. Mehrhoff*, 26 Fed. Rep. 13; *Jaynes v. Jaynes*, 39 Hun. 40; *Westlake v. Westlake*, 34 Ohio St. 621, 32 Am. Rep. 397; *Bennett v. Bennett*, 116 N. Y. 584, 6 L. R. A. 553, 23 N. E. 17; *Foot v. Card*, 58 Conn. 1, 6 L. R. A. 829, 18 Atl. 1027; *Breiman v. Paasch*, 7 Abb. N. C. 249; *Baker v. Baker*, 16 Abb. N. C. 293; *Warren v. Warren*, 89 Mich. 123, 14 L. R. A. 545, 50 N. W. 842; *Clow v. Chapman*, 125 Mo. 101, 26 L. R. A. 412, 28 S. W. 328; *Price v. Price*, 91 Ia. 693, 29 L. R. A. 150, 60 N. W. 202; *Gerner v. Gerner*, 185 Pa. St. 233, 40 L. R. A. 549, 39 Atl. 884; *Beach v. Brown*, 20 Wash. 266, 43 L. R. A. 114; *Dietzmann v. Mullin*, 108 Ky. 610, 50 L. R. A. 808; *Brown v. Brown*, 121 N. C. 8, 38 L. R. A. 242; *Betser v. Betser*, 186 Ill. 537, 52 L. R. A. 630; *Hodgkinson v. Hodgkinson*, 43 Neb. 269; 27 L. R. A. 120; *Lockwood v. Lockwood*, 67 Minn. 476; BIGELOW ON TORTS, 153; COOLBY ON TORTS, 227; 1 JAC. ON TORTS, 467; TIFFANY DOM. REL., 78. The following authorities sustain the decision in the principal case: *Van Arnam v. Ayers*, 67 Barb. 544; *Morgan v. Martin*, 92 Me. 190, 42 Atl. 354; *Doe v. Roe*, 82 Me. 503, 20 Atl. 83, 8 L. R. A. 833, 17 Am. St. Rep. 499; *Crocker v. Crocker*, 98 Fed. Rep. 702; *Duffies v. Duffies*, 76 Wis. 374, 45 N. W. 522, 8 L. R. A. 420, 20 Am. St. Rep. 79; *Houghton v. Rice*, 174 Mass. 366, 47 L. R. A. 310. See next note.

TORTS—WIFE'S RIGHT OF ACTION FOR ALIENATION OF HUSBAND'S AFFECTIONS.—Action by wife against her mother-in-law to recover damages for inducing plaintiff's husband to abandon her, and to refuse to live with and support her, whereby she lost the society of her husband, his comfort, aid, and support. *Held*, That she cannot recover. *Lonstorf v. Lonstorf* (1903), — Wis. — 95 N. W. Rep. 961.

This question arose in *Duffies v. Duffies*, 76 Wis. 374 and the right of action was there denied. See preceding note.

WILLS—DESCRIPTION OF LAND—EXTRINSIC EVIDENCE TO POINT OUT LAND DEVISED.—A will failed to name the county or state in which the land devised lay, and in one instance omitted a township number, and in the other the township and range. It was shown that testatrix was the owner of parts of sections corresponding to those described in the will, and had no other property. *Held*, that extrinsic evidence to explain the ambiguity in the description of the land was admissible. *Flynn v. Holman* (1903), — Ia. —, 94 N. W. Rep. 447.

The point decided is an interesting one although applying a principle fairly well recognized. The general rule is that extrinsic evidence of the circumstances, situation, and surroundings of the testator and his property, is legitimate to place the court which expounds the will in the situation